

AMESBURY ZONING BOARD OF APPEALS
City Hall Auditorium
62 Friend Street
June 26, 2013
Meeting called to order at 7:08 PM

Attendance: Bill Lavoie, Bob Orem, Matt Sherrill, Sharon McDermot, Olyce Moore.

Absent: Donna Collins.

Also in attendance: Denis Nadeau, Building Inspector; recording secretary and transcription by Paul Bibaud.

Ben Osgood sent a letter, stating he has to resign from the ZBA to relocate closer to elderly parents.

MINUTES – May 23, 2013: Bob Orem noted two alterations.

Motion to accept with corrections was made by Sharon McDermot, Seconded by Bob Orem. Unanimous .

REQUEST FOR EXTENSION: ATTITASH VIEWS COMPREHENSIVE PERMIT

Paul Habberty, from Regnante, Sterio and Osborn, representing applicant, Attitash Views, LLC. My client received a comprehensive permit from the board back in 2006. That permit had a number of conditions attached to it that were repealed, but went through a number of levels of appeals, ultimately not getting finally resolved until February 14, 2011. The comprehensive permit is good for a period of three years, which means it will expire in February 14, 2014. The applicant has the right to request extensions. As I indicated in my letter, during the appeals, the manager of the LLC passed away. It's been taken over by his family members, who are actively searching for a buyer, but as you know this has been a terrible time for the real estate market. They are looking for an additional three year extension so they can complete the marketing and the new buyer can move forward on the developments.

Matt Sherrill: You're asking for a three year extension. We never grant three year extensions. We have granted two years. The board feels it necessary to keep the applicant engaged in the process, so we prefer 2 as opposed to 3 year extensions. Would you agree to two years?

Paul Habberty: Yes, that is fine.

Matt Sherrill: That pushes it out to February 14, 2016.

Paul Habberty: Perfectly agreeable.

Motion by Sharon McDermot to accept the 2 year extension. Seconded by Olyce Moore. Vote was unanimous.

Carol Ann Yebba, seeking Special Permit / Finding to add an in-law apartment to a single family home at 5 River Court in an R8 Zoning District, Precinct 1.

Applicant was not going to be present at this meeting, so she sent a letter authorizing her builder to represent her before the ZBA. The letter was in the file, as requested. Also, Brianna Cash spoke that she is also here on behalf of her mother, the applicant. She also has a notarized letter

confirming her mother's wishes. Chair confirms he is in receipt of letter of authorization from the daughter, Brianna Cash.

Matt Sherrill: The ZBA had been concerned with last time was that there were no dimensions. An in-law apartment requires certain square footage, "no more than / no less than" kind of thing. She had none. The board told her to go back, get your dimensions and drawings, make sure it conforms with the zoning bylaws, and we'll discuss it at that point. So you have that?

The applicants approached the board to look over the two drawings available, then they proceeded to point out the particulars in question. The total square feet is 701. Under the conditions of in-law apartment, the size of the in-law apartment is not to exceed 1,000 square feet or not more than 30% of the gross floor area. So it will occupy the entire second floor. We were discussing the entrance to the in-law apartment. It will be through the front door. As part of the application, it has to have a common, unlocked door, and we discussed that with your mom. We were led to believe that she was going to be entering through the house. Applicants said "yes, she can." A second means of egress is available via the fire escape. She would walk up the stairs from the main house to access her apartment. There is no door at the top of the stairs.

Motion by Bob Orem to close and discuss. Seconded by Sharon McDermot.

The particulars of this application were put through the Special Permit Worksheet criteria and passed each question. Sharon McDermot then read the special conditions under Section XI have been satisfied. K2, the special permit, had 7 individual items listed and read. The ZBA agreed that those conditions will be met.

Motion to close and vote by Sharon McDermot, seconded by Olyce Moore. Unanimous.

BUZ COUILLARD SEEKING A VARIANCE to replace existing commercial structure with three single family house lots at 98 Friend Street in an R8 Zoning District, precinct 6.

Nick Cracknell, 13 Pickard Street, representing the applicant, Buzz Couillard. I am also an abutter to the project. To some degree, I represent the neighbors, as a collective design and "conditions wishing to be worked into this application" group. So we are presenting our preferred development plan. Subject property is only about 22,000 square feet, just over a half acre, but the larger parcel that makes up this property for the last fifty years or more is about an acre in size. The developer has a purchase and sale agreement to purchase the subject property as well as this third of an acre over on the back of Pickard Street. The applicant is present tonight. I believe the third parcel with the cinderblock garage shown on the lower right of the exhibit of existing conditions that is being retained by the owner for at least 2-3 years with an option to the applicant to purchase that 2-3 years time. It will be used for storage. So there are 3 parcels: one is the subject tonight, an acre of land. There was a plan submitted to the Planning Board last week, an ANR plan for a two lot subdivision of that space. That is likely to be approved at the next Planning Board meeting. Two: house will be located on this parcel that is not part of this application tonight. The subject land is R8. But going by the houses of this area for 100 years, it is more like an R5. Average lot size for single family house is about 6000 to 6500 square feet. Frontage average is closer to 60 feet than 80. There are many homes there that have 3-5 thousand square feet for single family house, but many have 1500 to 2000 per unit, because there are 2-3 family houses in the immediate neighborhood.

It's a very urban residential neighborhood. There is unanimity from all the immediate abutters and a petition we all signed that includes an understanding of this application. So we looked for a solution, imperfect but still a solution, for a plan that meets the goals and objections of both the

neighborhood and the developer. This is what we agreed we can all live with, and the city would be better off. Regarding hardship, it would be uneconomic to force the developer to turn this into a public street. Soil tests need to be done, since a former gas station is directly across Ellis. So I submit to the board a signed petition from abutters and neighbors all in favor of this project.

They all understand the trade-offs involved, with not everyone excited about five houses moving in, but all in favor nonetheless. That's the presentation. We are open for questions.

Bob Orem: Questions lot sizes on page 9. You talk of lot size of 6900 for lot one, 7200 for lot two.

Nick Cracknell: Excellent point. Looking at the plan now, I see the inconsistency. Probably what happened is when I submitted this application, these numbers were fine tuned with the plan, and the text had been put together for the narrative a week or more in advance.

Bob Orem: On page 10, it talks about 7380 square feet for lot 2, and 6657 square feet for lot 3.

Nick Cracknell: Yes. Those are the correct numbers and match the site plan. Page ten references the correct numbers for those two lots and the forty feet of frontage for the third variance is the same.

Matt Sherrill: You need to help me with the hardship issue, because this board has not been real amenable in the past to frontage variances. We'll give a couple feet at times, but usually a little, whereas you are asking for a lot. Speak a little more as to why you're requesting that as a hardship. You said you think you have more control over the plan and the product and homes are going to be better and more conforming to the neighborhood if they are allowed to put these in as opposed to an ANR "as of right" development with two homes. Why is the two being put in across the street not a problem, and also saying he could build a 3 family home there, if he wants. I don't believe that's true. I believe there is a provision in our bylaw for residential conversions in an R8 zoning district, but you can't build a 3 or a 2, unless I'm wrong. I'm reading this as a residential conversion and not an "as right to build." Help me with those 3 things.

Nick Cracknell: 1. Frontage: The hardship for frontage is the fact that this lot has a right-of-way, an undeveloped street on the back of its lot, on the side of the lot, that has 88.8 feet of frontage for that last lot that needs the frontage variance. The hardship is there is an undeveloped street here that is likely owned by these folks, underneath. But that doesn't solve the frontage problem. The way the frontage would have to be created under the zoning ordinances for that street to be brought up to town standards. There is a way there today, there for access but not for development, there are restrictions on that entire space. It's a travelled way. So the hardship is that it is unreasonable and uneconomic for this developer or anyone else to have to get a building permit to build a street 200 feet long, just to get to the last lot. That is probably \$100K away from being anywhere near an accepted standard for a public street, which is what the prerequisite would be to turn that into conforming frontage on the back. It's also not public property. It would have to be turned into public property to get the 80 feet of frontage. That is not economically feasible.

2. "If this isn't bad, what are you worried about?" I can tell you that this isn't going to happen. This isn't going to happen without this happening. This whole conversation between me, the neighbors and the applicant, Buzz has no desire to build homes of this quality because he's really nervous about the market and being able to bring a home like the one on Lions Mouth Road that sold for \$400K plus and building it in this neighborhood. That is not what is going to get built if this gets denied.

Matt Sherrill: So you're saying if he gets what he wants here, he then has to go to the Planning Board? Which board is going to give you the assurances that he's going to develop the properties the way you think he is going to, because it's not up to this board to do that?

Nick Cracknell: You can put stipulations on. We're volunteering the stipulation. We're not asking you. We're asking as a group for a neighborhood and for the developer. We've done all our homework on both sides to get agreement. If you look at that petition, there are stipulations that go with the signatures. Everybody that will stand up here later will say that their signature doesn't count unless you include the stipulation agreed to by the developer and by the neighbors. So it is definitely enforceable and this is the place to do it.

Bob Orem: One of the reasons for frontage requirement is access by fire and other emergency vehicles. Has that been investigated by yourself or developer?

Nick Cracknell: When the public way exists, that question doesn't come before the town. He has the ability as a developer to put four homes out there on that public way, based on the conditions on the grounds today.

Bob Orem: I guess its lot 3 has 40 feet. Is that satisfactory for access by fire, etc.?

Nick Cracknell: Absolutely adequate. It also holds true for lots 1, 2, and 3. They will all have the same dimensions and the driveway will be the same width.

Bob Orem: But there is less frontage. A fire truck only has 40 feet in front of the property.

Nick Cracknell: A fire truck is going to go in that driveway as far as it can. It is more than adequate.

As for Question #3: Future conversion to a two family: In my time in town, I can't remember anyone ever asking for it. So they will remain single family and not get converted to two or three family. That is also an option no one wants to see, including the developer.

Matt Sherrill: I'm still a little concerned about the density of the project. We don't usually have stuff like this come in front of us. This is more of a Planning Board type situation. This is beyond what this board is used to seeing. You have to get past the hardship to get to question #2. I'm always concerned about trying to create a hardship just so we can say yes, then have it real shaky if anyone decides to appeal our decision. I'm still concerned about a real lack of hardship.

Nick Cracknell: We know the bar is high and we're proposing something very different. The hardship is not something we want to take to the supreme court. We're trying to help the ZBA catch up to us. We have a plan, a petition from the entire neighborhood signed in favor of this, even stipulations, all agreed to by the developer. This is unique, obviously. If this is appealed, I'll ask Buzz. There will be no appeal. He'll go build the four houses. No one has time for that. So if someone appeals, they can, but this will be done and 4 homes will be there. That's the risk we take.

Matt Sherrill: I'm also a little concerned when you say that that 40 foot wide section right there would never be developed, it is financially not reasonable to develop it, but Mr. Michaud is retaining ownership of his storage buildings. What happens 3 years down the road when Mr. Michaud decides to sell that? I know there is a gentleman's agreement that he has first right of refusal to buy the property, should Mr. Michaud decides to sell it, but what if the developer dies and is not around to buy it? What happens to that property? Is someone going to try to come in and attempt to stuff 2 more homes in there?

Nick Cracknell: What I can tell you is only what someone can't do without coming before the ZBA. This is landlocked with no frontage on a public way. So it has no development rights for anything that any of us can see at this point, looking at the title. You are almost guaranteed, the

town and the neighbors, when Michaud sells that to whoever, unless they keep what is already out there, they would have to come before this board and notify everybody whether they want to do a garden shed or a 16 unit apartment building, and we'll deal with it when it gets here. The good news for us is, it has no associated development rights beyond what it is. Once the developer becomes owner of this property (under P&S now) then the developer has to go before the Planning Board for the approval of the subdivision. We as neighbors want the stipulations here, as the spirit of the agreement.

Denis Nadeau speaks from his seat in the audience. Again, it was unintelligible without utilizing the microphone. It was something about a FORM A.

Buzz Couillard made another comment, also from his auditorium seat, but it was unintelligible.

ABUTTERS:

1. Mike McHugh, 7 Pickard Street. Supports project.
2. Dick and Marsha King, 5 Pickard Street for 32 years. Concerned with quality of construction as well as the stipulation regarding noise. Hoping the fir trees buffering now will remain where they are.
3. Charles Basler, 11 Pickard Street. Supports project. Important to not create new issues but appreciates the ability for abutters to provide their input.
4. (unintelligible name), 13 Perkins street. Supports project but worries about property values.
5. Mike Mullen, 102 Friend Street. In support of project, just concerned of future fate of right-of-way. Also question about provisions for fencing for privacy, etc.
6. Kristina Burette, 5 Perkins Street. Supports project. She appreciates her ability to provide her personal input.

Denis Nadeau, Zoning Compliance Officer took the podium. I believe there is a third variance that is needed on the first lot out front, lot with minimum, has to keep the front yard setback, the front yard width all the way to the rear lot line setback, there is no way it does that with the taper it has on Friend Street. So they are going to have to add to that to request a variance from the lot width minimum.

Matt Sherrill: I see what you're saying. So it has to be consistent and stay 80 feet all the way back to 30 feet from the rear lot line, vs. 67 on the other side, which this plan shows.

Nick Cracknell: Here's a response to that. The frontage to that lot is both on Friend Street and Ellis Court. That lot has more than 80 feet of frontage. It has 90 on Friend Street. It meets the lot width minimum if the frontage of that lot is on Friend Street.

Denis Nadeau: Yes, that's true. He can do that. He can pick his own frontage.

Matt Sherrill: They are looking for variances on frontage for lot 3, and lot area (page 10).

Motion to close and discuss by Sharon McDermot. Motion is seconded by Bill Lavoie.

Vote was unanimous to close and discuss.

Matt Sherrill: First of all, we have to discuss what a substantial hardship is. They are asking for relief, which Bob has informed us is on page 10 of the addendum that is attached to the application. They are asking for a variance to allow a minimal lot area of 7380 square feet for lot two, and 6657 square feet for lot 3, where 8000 is required, and the other variance being asked for is to allow us to have minimum frontage of 40 feet on lot 3, where 80 feet is required. Those are the two variances that we need to discuss. In order to get there, we have to have a substantial hardship for these variances to be approved. So the applicant was saying that the hardship, as far as he

is concerned, the hardship would be that it is just not financially sensible to turn an undeveloped way into an approved road, in order to get the frontage needed for all three of those lots. That speaks to the frontage, but he's also creating his own non-conformity by creating lots that are too small, in order to get three. So we have to put in that hardship that there is something to do... and it has to relate to the soil, shape and topography of the land it structures. So we've got to tie the hardship into the soil, shape and topography of the land it structures.

Olyce Moore: The financial hardship is not something legally we should be addressing. We don't usually...

Matt Sherrill: I'm pretty sure that financially, you can use financial hardship as a hardship. Normally we don't listen to a financial hardship, but it says in our bylaws that financial is one of the things that can be considered as a reason for a variance.

Olyce Moore: It could come under soil, if they have to do a remediation due to the former gas station residue. That would present a financial hardship.

Sharon McDermot: Not to build three lots, though.

Olyce Moore: Because they want to build three lots instead of two, it would be a financial hardship

Matt Sherrill: The extra money would have to be spent to develop an undeveloped road into a road. So according to his testimony, he is saying that it could cost upwards of \$100K to make that an approved road by the town. So you'd have to put the correct width in, put the sidewalks in, run in utilities, curb cuts, etc. for that road to be considered an approved road, where you already have an approved road on the other side. So it would be a financial hardship to develop a road just to get the frontage. I'm ok with that. That one passes muster for me. Its how do we craft our hardship decision based on allowing them to create their own non-conformity. With all due respect to the applicant, he was in front of us several years ago when we denied him this same thing, that he was creating his own non-conformity, and at the time, we weren't comfortable with that. But that was a completely different situation, having to do with banks, and loans, and financing. We've talked in the past about creating non-conformities and that usually we are not⁵ in favor of this. With that said, this is not something we normally see, as well as seeing an entire neighborhood in favor of a development. That needs taking into consideration. So we need to develop ad craft some hardship language that works. I'm looking to you, Bob Orem, to see if you can come up with anything that seems to make sense.

Bob Orem: I'd say it is the cost of extending the street, which would remove the frontage.

Matt Sherrill: How can we tie that in to allowing him to create two undersized lots? That solves one issue, but not the other one.

Olyce Moore: We don't know how extensive into which area the contamination might be. I still think that soil is a hardship. I was thinking that we've got this lot that is going to be broken into three, and you don't get your proper frontage. Who knows what undiscovered costs might be there, since it was all property of the gas station?

Matt Sherrill: So you're saying there could be undiscovered costs in this development that could offset the extra cost to clean that lot up because of its prior use. That makes sense. We're reaching on this, but I like the thought process. Because there could be undiscovered / unknown costs involved in cleaning up the site, which then would have the ability to allow the third lot to recoup some of his loss on the property. Is anyone here feeling uneasy about this project, trying to craft language to pass this?

Sharon McDermot: I'm a little uneasy about it. But if you can convince me, then I'm on board.

Matt Sherrill: Bob Orem, do you think you could put something down on paper that would create us to feel comfortable with the hardship as far as it relating to the financial cost of the road?

Bob Orem: I would like to hear more about what they may have learned about the required remediation. Apparently, there's been some explanation of that?

Matt Sherrill: Well, we've closed the meeting to the public, but if what you're asking for is going to help you decide on the hardship, we could re-open that. So you want to ask the developer what he has found so far?

Bob Orem: Correct.

Matt Sherrill: I will allow that. So, what we'd like to do, Nick Cracknell, is to ask the developer, Buzz Couillard, what has he found on that property. Is there a chance that there is going to be something in that ground that he doesn't know about at this point?

Buzz Couillard: There has been a couple environmental issues with the ground. They discovered low concentrations of lead in the ground water and there's tests being performed now. Some of those tests have been sent to be evaluated and Phil Michaud has hired SAC environmental already to do all his testing. It's gotten very expensive for him, into the tens of thousands of dollars already. I don't know how much more it will be.

Matt Sherrill: So that throws that argument out the window, if I heard you correctly.

Buzz Couillard: Not exactly. I think the point is, he is getting substantially less money for his property.

Matt Sherrill: We are trying to tie this into a financial situation, trying to say that you, as the developer, as you start to dig your foundations, is there a possibility that you may run into something that was unexpected and its going to going to cost you more money, and that's why you need the third lot.

Buzz Couillard: That's very possible but we don't know that yet.

Matt Sherrill: Are you willing to take on this property without a complete and full EPA sign off?

Buzz Couillard: I'm buying this July 18, 2013, no matter what. So my answer is yes.

Bob Orem: Have the storage tanks for the gasoline been removed?

Buzz Couillard: Yes, in 1998. But am I right, Nick, that the board is to grant us the variance for the land, not to me, directly, or is it more towards Phil Michaud that is getting the benefit of this?

Matt Sherrill: No, it is, but we're trying to say that, if you buy this property, then you are going to be able to do what you are asking to do on it. It has nothing to do with Phil. You know as a developer what you have to do to get a variance, and it's a high standard. It has to relate to the shape, size of the land or structures of the land its built on. You're asking us to craft a variance hardship, and we're really having a hard time doing this.

Buzz Couillard: Isn't the shape of the lot also to be considered?

Matt Sherrill: No, not really. We'll put Nick back up here. I think you are shooting yourself in the foot.

Nick Cracknell: First point that is I think on point, is the variances run with the land, not the person. So these variances would run with Phil, the current owner, if for some reason Buzz disappears. They run with the land and go with 98 Friend Street, as long as they are recorded.

Matt Sherrill: But we know Phil isn't going to develop this property.

Nick Cracknell: I understand, but Phil could pass this on to somebody else, if this didn't work out. So Phil is a co-applicant here because he still owns the land. Just to clarify. You asked about the lot area. To me, it's the same answer as the frontage. This land area exists for the undevel-

oped street that sits behind it, its still not clear because neither Buzz nor Phil have spent the money going through all the title work to figure out who laid out that street, we know the beneficiaries of that street are Phil, whoever owns this piece (pointing to map), this house, and this lot. The benefits go to everybody on both sides. It's a right-of-way. What we don't know, because they probably haven't wanted to spend the thousands of dollars to do all the title work to go back to the nineteenth century, its possible that that is owned by people on both sides, to the middle of the street, which would create the 5000 square feet meaning half of it that would make the lot area a non-issue. But rather than spend thousands of dollars doing the title work for something we don't need anyway, and the use is not likely to change, we didn't spend that money to say either Phil owns it, or everybody owns it to the middle. It wasn't worth the money to figure out the ownership structure was in 1850 or whenever it was laid out. That is the hardship in my mind, but the lot area and frontage still relates to that space that this property has vested property rights in.

Matt Sherrill: OK, so we'll close the hearing again. What do you think, Bob? The only reason I'm intrigued or even thinking about this is the fact that we have a complete neighborhood that is in favor of this. That helps me tremendously that this is ok as opposed to neighbors being up in arms, saying we don't want this. I think it is worth exploring this hardship, and then get those stipulations in there so the neighborhood has assurances that the homes going in there will be consistent with what the developer is going to do. We still have to get past the hardship. I'm alright with the road, development, extra finances, and if that can be tied into the undeveloped road and the fact that you'd have to do a title search on all of these properties to find out who owns the land and if that's possible, they would then find that if they own halfway through, then the lot would be conforming with enough lot size, making it a non-issue, I'm ok with that.

Olyce Moore: Could we put that under the shape of the land, in the fact that you've got this road, and if they did spend all this money, time and energy, to figure out who owns to where, there would be no problem. So the exact area of the shape is undetermined.

Matt Sherrill: Without spending a lot of money, the "as presented on the plan" is what they have to work with, because of the extra financial cost to really find out who owns the development rights on the undeveloped road. Does that help you, Bob?

Olyce Moore: You could have both, the soil and the shape.

Matt Sherrill: I agree. Normally, the land that is being sold, it is the seller that is responsible for most of the remediation, but if the applicant is willing to take on the property at a certain date, regardless of the outcome of the testing, then there could be extra costs built into the project, no question.

Sharon McDermot: The current structures as they exist, having been a gas station, and moving to houses could possibly be considered a hardship, because you have to remove all of that? Because you have to remove all the soil, etc. It could be a hardship relating to the soil.

Matt Sherrill: Getting past the hardship, if we want to agree that we're going to craft some language, do the above features effect the district? The answer is no. What would be the substantial detriment to the public if this was granted? All the neighbors answered that this would not be of substantial detriment, but most feel it would be a substantial improvement to the neighborhood. So no substantial detriment to the neighborhood. Does this petition derogate from the intent of the bylaw? No. It encourages the most appropriate use of the land in town. Neighbors agree it is an appropriate use of this property. There are also stipulations in this letter. One stipulation says that the exterior design and finish of the single family houses will be consistent with the informa-

tion and images presented and shown on the application. Do we want to make that statement part of this application? I think it is imperative that we do, because the neighbors are hanging their hat on that the developer is going to do what they have asked him to do, and this holds his feet to the fire. So on this application, we will include the stipulation that is on the supporting material that has been presented that says the exterior design and finish of the single family houses will be consistent with the information and images shown on the application. The other stipulation is: in order to provide a privacy screen between the properties, the applicant will not remove the mature trees ten feet from the property perimeter. I see that as a stipulation that we should put on there. (all on the board agreed). As part of this application, when we consider it, we will consider also part of the decision, the stipulation #2 on the material, "in order to provide a privacy screen between the properties, the applicant will not remove the mature trees within ten feet of the property perimeter." That will be part of the application decision. Bob, do you have something for us?

Bob Orem: I'll read you what I have:

"Because of the location of the subject property, the only present frontage access is on Ellis Street and Friend Street. It is possible that the rights for the property owner might extend further, but the cost of the research to resolve that potential is prohibitive. Also, it would not be feasible to extend Ellis Street to create more frontage. Lastly, the prior use may require costly remediation That is not known at this time, which means that the development cost of the property would be more reasonable with three lots rather than two".

Matt Sherrill: So that speaks to the hardship, it speaks to lot size, it speaks to the soil, and that's how it's due to the soil of the land or structures. Does the board feel comfortable with that as being our hardship and how it ties to the soil, shape, topography of the land or structures?

Board answers yes unanimously.

Matt Sherrill states we will put that in the record as being our answer to question one and two on the variance worksheet as to what is the substantial hardship and how is it do to the soil, shape, topography of the land or structures. So, is everyone comfortable with that language?

Board all answer yes.

Motion to close and vote by Sharon McDermot. Seconded by Olyce Moore. Application is unanimously approved with the stipulations.

Julie Sheehan, 59 Pleasant Valley Road, seeking a Special Permit / Finding for a residential kitchen for the purpose of producing and packaging granola cereal in an R80 zoning district, precinct 1.

Julie Sheehan: One modification on the application, on number 12, I wrote "residential kitchen for the preparation of non-hazardous foods for retail distribution." It should also say "and / or wholesale distribution," because that is the next permit I will be seeking from the state. There will not be any retail out of the home. Retail would be at a farmer's market or something like that. No retail distribution from the home should be made clear in the description. There will be no employees, no additions to the kitchen, and I have no neighbors here to testify. I've been producing granola for family and friends for a while, and they all say to go for it. I can do all I need to do out of my kitchen. No increase in truck traffic, I purchase all my ingredients through a retailer.

Matt Sherrill: The square footage can't be more than 400 square feet, and it will be 168 square feet, so we're ok there.

Motion by Sharon McDermot to close and discuss this application. Seconded by Bob Orem. All in favor.

The board went through the Special Permit Worksheet criteria, and passed on every count. Special conditions passed on all counts. Also, a small, non-electric 2 foot square sign carrying only the applicant's name and occupation is permissible. All conditions were met.

Motion to close and vote by Sharon McDermot. Seconded by Olyce Moore. The vote was unanimous.

James and Jaylene Buonodono seek variance to transfer Lot A2 to the owner of Lot B2 which will create a lot of insufficient area at 41 Birchmeadow Road, R20 zoning district, precinct 5.

Sharon McDermot has a conflict as a direct abutter, so she has to recuse herself from this hearing. That leaves 4 seated board members which would require a unanimous vote tonight in order to pass this vote. That is agreed to by the applicants.

Paul Gagliardi, attorney for applicants: The applicant is proposing to is to transfer a portion of their property to the direct abutter to add it to that lot. Currently, the applicant owns what is shown on the plan as Lot A1 and A2. They look to transfer Lot A2 to the owner of Lot B2. As a result of that, if approved, their lot will go from being a conforming lot regarding area size to being a non-conforming lot with area 10746 square feet, which does not meet the 20000 square foot requirement under the Amesbury Zoning Bylaw. I have photos to show you which show the topography of lot A2. A2 is very hilly, not flat. Because of the topography and shape of this lot, its usefulness as a part of lot A1 is negligible, if at all. Part of what is going on is that this lot was created simply to comply with the area requirements of the bylaw, which it does. The combination of A1 and A2 does comply with the bylaw, but shows you no benefit from a zoning standpoint because it is not useful. Because of topography, narrowness, and hilly, to even traverse from A1 to A2 in the back is difficult and doesn't serve the purpose of the area requirement under zoning bylaw. The area requirement of the bylaw is so that we don't have small lots and congestion. This is not aiding that purpose of the zoning bylaw. This lot, actually, under current zoning requirements, you couldn't create a lot that looks like this, because you need to have the rear yard setback, a frontage requirement, and go all the way back. The required frontage has to be 125 feet which the front lot on the street was created so long ago, that it doesn't comply with that requirement now and never did. So this property doesn't serve any zoning purpose, and costs the applicant money for taxes, which is what we consider the hardship: the cost of keeping a lot of that size that is of no use is the hardship that the applicant has. The use for the abutter would be far great. As a result of having the land that actually abuts their portion that is so hilly can be integrated with his property and create a useful piece of land that does serve a useful purpose under the zoning bylaw. It is not detrimental to the intent and purpose of the bylaws because it would create a purpose where there is none. It gives no protection to the houses. It is not decreasing the density of housing where the houses exist. There is no more construction to be done. That is where we're coming from. The hardship, again, can be financial and part of the financial burden is having land that you have no use of due to topography and shape. The topography wouldn't be such a big deal if the shape was not so narrow overall, which contributes to your ability to use and it costs money to keep it. There is also concern that is doesn't appear to be part of lot 1, plus there are liability risks with that land because it doesn't connect in anyone's mind, so you are apt to have people using it that don't own it, creating liability on the part of the owner of lot 1.

Olyce Moore: Is the owner of lot B1 also the owner of B2? (Atty. Answer is no). So we have a lot with a right-of-way and a garage and storage shed that is now going to have more land but still not going to build on it. (Atty. agrees there is no intention to build on it).

Motion to close and discuss by Bob Orem - seconded by Bill Lavoie.

Matt Sherrill: Hardship is a financial burden on owner to be paying taxes on property that is serves no useful purpose. It is due to the shape of the lot A2 and renders it unusable. Topography is hilly and steep on the narrow part of it, also making it unusable. So: the financial cost due to taxes for property that serves no useful purpose to the current owner due to shape and topography of the lot. Putting this proposal through the special permit worksheet questions, it passes all criteria.

Motion by Olyce Moore to close and vote. Second by Bob Orem.

Vote was 4 in favor to approve this request for lot transfer. Sharon McDermot recused.

Motion to close the meeting by Bob Orem. Seconded by Bill Lavoie.

Meeting was adjourned at 9: 40 P.M.